

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION  
C/A NO. 4:10-cv-01420-TLW-TER

Eric Kelley,  
Plaintiff, -  
v.  
United Parcel Service, Inc.,  
Defendant.

COPY

DEPOSITION OF  
**ERIC KELLEY**

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DAY ONE

Friday, July 8, 2011  
2:50 p.m. - 4:07 p.m.

DAY TWO

Monday July 11, 2011  
9:20 a.m. - 11:15 a.m.  
and  
4:43 p.m. - 6:33 p.m.

The deposition of Eric Kelley, taken on behalf of the Defendant, on the 8th day of July, 2011, at the offices of Creel Court Reporting, 1230 Richland Street, Columbia, South Carolina; and on the 11th day of July, 2011, at the law offices of Turner Padgett, 319 S. Irby Street, Florence, South Carolina, before Christine A. Cortright, Court Reporter and Notary Public in and for the State of South Carolina pursuant to Notice of Deposition and/or agreement of counsel.

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- 1 A: It was a layoff. Yes.
- 2 Q: So it was a layoff? Okay. But as far as you
- 3 understand, you weren't fired for cause?
- 4 A: From Galey and Lord?
- 5 Q: Correct.
- 6 A: No.
- 7 Q: And it states here that you began your
- 8 employment with UPS July 31, 1996, correct?
- 9 A: Correct.
- 10 Q: And you remained employed until your discharge
- 11 on January 3, 2009?
- 12 A: Correct.
- 13 Q: And at the time that you worked for UPS, there
- 14 was some period of time where you were also
- 15 working at Galey and Lord, correct?
- 16 A: Correct.
- 17 Q: Okay. After you left Galey and Lord due to the
- 18 layoff and during the time that you were
- 19 employed by UPS, did you have a second job?
- 20 A: Other than UPS and Galey and Lord?
- 21 Q: Well, let's talk about once you left Galey and
- 22 Lord, from 2004 to 2009, you were only working
- 23 at UPS?
- 24 A: Right.
- 25 Q: As far as this sheet says?

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1 would have some of us come in early and some of  
2 us come in later. It was staggered.

3 Q: All right. And how long were you a local  
4 sorter?

5 A: The whole time. I always worked on the local  
6 sort.

7 Q: You became a vehicle shifter at some point,  
8 correct?

9 A: Correct.

10 Q: Was that in 2008?

11 A: I'm not sure, but I believe so.

12 Q: All right. And I think there was some  
13 testimony on Friday about a discharge that  
14 occurred in 2001 dealing with issues of  
15 insubordination; do you recall that?

16 A: Yes.

17 Q: Tell me what happened.

18 A: Well, what happened that day was I completed my  
19 work and I can't remember who the supervisor,  
20 part-time supervisor was at that time. And I  
21 know I had mentioned earlier to that part-time  
22 supervisor that I had to, after I finished my  
23 work, I needed to go, to leave.

24 Q: And why did you need to leave?

25 A: Well, I had some personal issues at home.

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1 Q: Do you know why?

2 A: Because, you know, I was proven no wrongdoing.

3 Q: Okay. Was there any instruction given by the  
4 panel or anyone else with respect to  
5 instructions from managers or supervisors?

6 A: Any instructions to --

7 **MR. BABB:** Object to the form of the question, but  
8 you can answer.

9 Q: Do you recall whether the panel had any  
10 instruction for you with respect to directions  
11 from managers or supervisors going forward?

12 A: No.

13 Q: All right. And I think you testified that you  
14 believe at some point in 2008 you became a  
15 vehicle shifter, is that correct?

16 A: Correct.

17 Q: What are the duties of a vehicle shifter for  
18 the record?

19 A: Shifters are -- is where you pull trailers off  
20 the dock and put trailers on the dock.

21 Q: Trailers for the feeder drivers?

22 A: For the --

23 Q: Tractor trailers that UPS --

24 A: Right, for the building, for the center.

25 Q: And what do you use to move those trailers?

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1 MR. BABB: Object to the form.

2 Q: Okay. I'll ask it this way. You testified a  
3 moment ago that you had previously applied for  
4 an air driver position or bid on an air driver  
5 position, correct?

6 A: I have before, right. I mean, I became an air  
7 driver.

8 Q: When did you first apply for an air driver?

9 A: The first time that I can remember is back in  
10 2002.

11 Q: Okay.

12 A: When I had taken a road test.

13 Q: Now, when did you actually become an air  
14 driver; do you recall what year?

15 A: No, I don't.

16 Q: Was it after you became a shifter or at the  
17 same time?

18 A: No, it was before that.

19 Q: It was before that?

20 A: Right.

21 Q: So, again, I believe you think you became a  
22 shifter sometime in 2008. Do you recall how  
23 long before you became a shifter you were doing  
24 air driving?

25 A: I don't. I can't say.

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1 Q: So prior to becoming a shifter, you were doing  
2 local sort and some air driving, is that  
3 correct?

4 A: That's correct.

5 Q: Okay. But you don't remember what year you  
6 started doing that?

7 A: Right.

8 Q: Tell me what's involved in becoming an air  
9 driver, once you bid on that position.

10 A: You know, I'm thinking back here now and I know  
11 I became an air driver, but I don't remember  
12 going -- I don't remember going to the school  
13 as if I was becoming a full-time driver because  
14 I was an air driver before I actually went to  
15 school for a full-time position.

16 Q: And I think there was some testimony about you  
17 applying for a full-time package car driver  
18 position as early as 2005?

19 A: Right.

20 Q: And so you believe that you were air driving  
21 before that?

22 A: No, I wasn't because I was still working at  
23 Galey and Lord, so I became an air driver  
24 sometime -- sometime after I --

25 Q: Okay. And Exhibit Two, just for your benefit,

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1 indicates that you left Galey and Lord in April  
2 of 2004. So it was some point after that that  
3 you became an air driver?

4 A: That's right.

5 Q: But you don't remember how long after?

6 A: No, I don't.

7 Q: Okay. And at the time that you were sharing  
8 duties as a local sorter and an air driver,  
9 tell me what your air driving responsibilities  
10 were.

11 A: My air driving responsibility was to come in on  
12 Saturdays and deliver Saturday next day air  
13 packages.

14 Q: So the only time you got behind a wheel during  
15 the time, and I'm talking now just about the  
16 time that you were a local sorter and doing  
17 some air driving, the only time you got behind  
18 a wheel was on Saturdays?

19 A: That's correct.

20 Q: And tell me --

21 A: Well, we ran, you know, at the -- we have an  
22 air trailer doing a local sort and sometimes  
23 the air trailer has to leave before all the  
24 next day air packages is on it, and so they  
25 were running what they call a shuttle. And

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1           then they asked me if, you know, take me off of  
2           my local sort job and asked me to run the  
3           shuttle to Columbia at night and I did that  
4           sometimes.

5       Q:    Okay. In a given month during this time, how  
6           often would you say you made that shuttle run?

7       A:    It wouldn't happen very often.

8       Q:    Two or three times?

9       A:    I would say maybe once or twice.

10      Q:    Once or twice a month?

11      A:    Right. Now, during the -- during what we call  
12           the peak season, you know, it happens quite a  
13           bit.

14      Q:    And peak season, for the record, is  
15           approximately November to January?

16      A:    That's right.

17      Q:    When, because of volume, it's just an  
18           incredible, many more packages coming down?

19      A:    Right.

20      Q:    And so your duties, I think you said, the air  
21           driving duties that you performed was  
22           exclusively on Saturdays?

23      A:    Right, and holidays, if there was a holiday.

24      Q:    And at those times when you were asked to do  
25           something, it was to run the shuttle from



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1 Florence to Columbia?

2 A: Right, that would be on Saturday.

3 Q: Right. And sort of approximately what time of  
4 day would you leave Florence if you were making  
5 that shuttle run?

6 A: I would leave after the Myrtle Beach driver got  
7 there and then after he gets there, we go to  
8 the UPS Store, and that would be approximately  
9 around 4:00 p.m.

10 Q: Okay. So this was the same run that you were  
11 asked to do on the day of your discharge,  
12 correct?

13 A: The shuttle run?

14 Q: Yes.

15 A: Right.

16 Q: It's the same run from waiting for the Myrtle  
17 Beach driver, going by the UPS Store, and then  
18 driving to Columbia?

19 A: Exactly.

20 Q: So if you leave Florence about 4:00 p.m.,  
21 generally when would you get back on those days  
22 when you did this run?

23 A: Somewhere around 8:00, maybe a little after.

24 Q: Okay. And I'm guessing by the time you got  
25 back to the center on those days, the center

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1 during Saturday. If I ran air during the week,  
2 it will be where like on Mondays, the 22.3 guys  
3 didn't work, then they would ask me if I wanted  
4 to come in and run air.

5 Q: You were normally off on that day?

6 A: No, I worked during the evening and that would  
7 be during the morning that they would call me.

8 Q: Okay. And what would running that air consist  
9 of?

10 A: That would be consist of -- it wouldn't be  
11 consist of taking a shuttle. It would be  
12 consist of our running, delivering air packages  
13 in the area.

14 Q: And how often would you say you did that?

15 A: About the only time I got to do it is when the  
16 22.3 guys was off on Mondays, but, you know, it  
17 wouldn't be every Monday. I didn't do it very  
18 often.

19 Q: Would you say once a month, twice a month?

20 A: I did it for a short period of time. I didn't  
21 -- didn't do it that often, you know.

22 Q: And are there other employees in the Florence  
23 center who would make that run from Florence to  
24 Columbia, the air run on Saturdays and  
25 holidays?

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1 A: Yes, the 22.3 guys. That's their job.

2 MR. BABB: Chuck, are you referring to the shuttle  
3 run?

4 MR. GARTLAND: Yes, that's the one I'm referring to.

5 Q: And who are the 22.3 -- at the time of your  
6 discharge, who were the 22.3 drivers in the  
7 Florence center?

8 A: Jamie McDonald is one of them, a guy named  
9 Martin Smith, and Perry Price.

10 Q: And it's your testimony that sometimes these  
11 22.3 drivers would be the one to make the  
12 shuttle run?

13 A: No, it was their job to make it and if they  
14 didn't want to, then they would ask me if I  
15 wanted to.

16 Q: So it's your testimony that these 22.3 drivers  
17 were offered the shuttle run each time?

18 A: Yeah, it's their job, right. There was some  
19 time where I wanted to run it, but I would get  
20 bumped because one of them by having a full-  
21 time position would have seniority over me.

22 Q: Did they do any driving other than the shuttle  
23 run to Columbia?

24 A: Right.

25 Q: Okay. What other types of driving did they do?

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1 A: I mean, they are the delivery guys also.

2 Q: So they deliver air?

3 A: Right. Well, they deliver, they can deliver  
4 air and ground packages.

5 Q: Just depending on the volume or what the needs  
6 of the center are?

7 A: I guess.

8 Q: And prior to January 3, 2009, the date on which  
9 you were discharged, did you ever decline --  
10 were you ever asked to take the shuttle run and  
11 you said no thank you?

12 A: Yes.

13 Q: Tell me about that.

14 A: There was times that they would ask me to take  
15 it and I would tell them, you know, I had  
16 something to do that day, but this will be  
17 after the 22.3 guys, you know, say that they  
18 didn't want to take it.

19 Q: And if you said no, what did they do?

20 A: Nothing. They would just say okay.

21 Q: I'm sorry, how would they make -- how would  
22 they get the next day air to Columbia?

23 A: Oh, they would -- they would go back to the  
24 22.3 guys and say, okay, one of you guys got to  
25 take it.

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- 1 Q: So they wouldn't go to a part-time employee  
2 with less seniority than you?
- 3 A: I mean, they could. They could, but, you know,  
4 there again, if that part-timer refused it,  
5 then they would go back to the 22.3 guys.
- 6 Q: Now, do you know under the collective  
7 bargaining agreement -- well, never mind,  
8 strike that. All right. Let's talk about the  
9 day on which you were discharged. Normal  
10 Saturday?
- 11 A: Correct.
- 12 Q: And you reported to work as a shifter?
- 13 A: No, no, air driver.
- 14 Q: This was a Saturday, so you were doing  
15 exclusively air driving?
- 16 A: Right.
- 17 MR. BABB: Chuck, I want to interrupt you. You're  
18 getting into the termination?
- 19 MR. GARTLAND: I am.
- 20 MR. BABB: If you don't mind, let's take a very  
21 quick break.
- 22 MR. GARTLAND: That's fine.
- 23 (Off the Record)
- 24 Q: Mr. Kelley, are you ready?
- 25 A: Yes sir.

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1 Q: All right. So, just so I can understand. I  
2 want to understand sort of the scheduling and  
3 how it worked. How would you know to come in?  
4 Did you come in every Saturday to do air  
5 driving?

6 A: I mean, the majority of the times, yes. Ninety  
7 percent of the time, yes, I was there. I  
8 didn't hardly miss any, any days at all.

9 Q: And was it part of your regular schedule to be  
10 there on Saturday?

11 A: Yes.

12 Q: And when you came in on Saturdays, what time  
13 would you start?

14 A: I would be one of the first there.

15 Q: At what time?

16 A: I would say around 8:00, a little after 8:00.

17 Q: 8:00 a.m.?

18 A: Right. And because, actually -- I mean, I  
19 would get there because the 22.3 guys, it was,  
20 I would get there and try to go ahead and  
21 unload the air trailer that comes in. You  
22 know, the 22.3 guys were getting there kind of  
23 late and the trailer would be sitting there for  
24 anywhere from 30 to 45 minutes, so, you know,  
25 I asked could I go ahead and come in to go

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1 ahead and get the air packages out so we could  
2 get a early start and wouldn't have to worry  
3 about packages being delivered late.

4 Q: All right. So you say on most days you started  
5 around 8:00 a.m.?

6 A: Correct.

7 Q: And what did you do -- other than air driving,  
8 what did you do on those days?

9 A: I would unload the, what we call the air bubble  
10 to the air trailer so we could get those  
11 packages down the belt and sorted.

12 Q: Anything else?

13 A: And then after that I, you know, delivered.

14 Q: Did you have a regular route?

15 A: Yes.

16 Q: Just generally, where was that route where you  
17 were delivering air?

18 A: I had at least, I don't know what my area is  
19 called, but I know Darlington, Hartsville,  
20 McBee, Bethune, Patrick and maybe two more, but  
21 I can't really think of the names of the towns  
22 right now.

23 Q: Okay. And when you finished up with your route  
24 and got back to the center, what would you  
25 typically do?

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1 A: I would check the -- I would do a security  
2 check on the premises making sure that the  
3 doors on the tractor trailers that have  
4 packages on it was secure.

5 Q: Because they are going to be there on Sunday?

6 A: Exactly.

7 Q: Unattended?

8 A: Right.

9 Q: Anything else you would do before you typically  
10 did the shuttle run?

11 A: That's it. If I'm going to do the shuttle run,  
12 then that's when I would do the security check.  
13 And sometimes I would be asked to do the  
14 security check even though I'm not going to do  
15 the shuttle run. But I had the option to  
16 either --

17 Q: And typically, if it's a day when you don't do  
18 the shuttle run, you punch out and go home at  
19 that point?

20 A: Correct.

21 Q: So at some point did you understand on  
22 Saturday, January 3, 2009, that you were going  
23 to do the shuttle run that afternoon?

24 A: No. I didn't find out until after I got back,  
25 after I completed my run.

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1 Q: Was that typical?

2 A: No. No.

3 Q: Usually you knew in advance?

4 A: Right. I would --

5 Q: How far in advance would you know?

6 A: Normally, I would get a text message through my  
7 DIAD board.

8 Q: But on this particular day you were told when  
9 you returned to the center?

10 A: Correct.

11 Q: By Tanisha Sam, is that correct?

12 A: Well, I was shown text messages.

13 Q: But Tanisha was the supervisor you spoke with  
14 first?

15 A: Right, right.

16 Q: And for the record, what was Tanisha's position  
17 at the time? She was a part-time supervisor?

18 A: Yes, as far as I know. I know she was there  
19 that day over the air drivers and she normally  
20 be's the one, but whether she actually -- I  
21 don't know whether she is a supervisor or not.

22 Q: That's fair. But you have worked with her in  
23 the past?

24 A: Oh, yes.

25 Q: So tell me about the conversation where Ms. Sam

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1 told you you'd be doing the shuttle run.

2 A: Okay. When I got back to the center after I  
3 completed my regular route, I was shown a  
4 message by her that Brad had sent her about  
5 whoever was doing the shuttle, that the person  
6 had to wait on the outside of the building  
7 while it is locked because, you know, she  
8 couldn't get any overtime.

9 Q: So she had already worked eight hours that day?

10 A: Well, she was just -- it was just about that  
11 time.

12 Q: So, almost 4:00 p.m.? I'm sorry. Do you know  
13 when she started work that day?

14 A: Around the time I did, which was, you know,  
15 somewhere around 8:00 or a little after.

16 Q: Okay. So eight hours from 8:00 a.m. would be  
17 approximately 4:00 p.m.?

18 A: Correct.

19 Q: Do you recall what time it was that you had  
20 this first conversation with Ms. Sam?

21 A: That was shortly after I got back off of my  
22 regular run.

23 Q: So somewhere at 3:30 or 4:00? What do you  
24 think? Best guess.

25 A: Best guess would be around 2:30.

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1 Q: 2:30?

2 A: Right.

3 Q: Okay. And she showed you some text messages,

4 you said?

5 A: Yes.

6 Q: From Brad Hanser?

7 A: Right.

8 Q: And I presume she also spoke with you?

9 A: Right.

10 Q: She didn't just hold up her phone and show you

11 text messages?

12 A: I mean, she let me read it.

13 Q: Right.

14 A: She did do that.

15 Q: But she also talked with you about it?

16 A: Right.

17 Q: Okay. And to the best of your recollection,

18 what did she say?

19 A: She was explaining to me what Brad had said

20 about whoever's taking the shuttle had to wait

21 on the outside while waiting on the Myrtle

22 Beach driver.

23 Q: Did she tell you that she expected you to make

24 the shuttle run?

25 A: No. Before she could get that out, after I

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1 read it, you know, I went back to the prior  
2 time that this came up. I told her that, you  
3 know, that we had this discussion before and  
4 that, you know, they saw where -- the danger in  
5 it and they let -- and they let her stay.

6 Q: Who is they?

7 A: I want to say management. I can't remember who  
8 it was at that time.

9 Q: So it's your testimony that you had previously,  
10 on some prior occasion, talked with Ms. Sam  
11 about a safety issue at the center?

12 A: Correct.

13 Q: Okay. When was that, do you remember?

14 A: I can't remember. I know maybe, my best guess,  
15 a couple months before that.

16 Q: Okay. I want to talk about that time a couple  
17 of months before.

18 A: Okay.

19 Q: Was that the only time before that you had  
20 discussed this issue with Ms. Sam?

21 A: Right. Because that was the only time. That  
22 was the first time that it was brought up.

23 Q: What was brought up?

24 A: About her leaving and locking the driver out of  
25 the building.

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1 Q: Okay. So the discharge took place January 3,  
2 2009. So you think this previous discussion  
3 occurred sometime in the fall or winter of  
4 2008? I guess, November or October, somewhere  
5 in that time frame?

6 A: I'm not really sure, but I know it wasn't, you  
7 know, that far back.

8 Q: Okay. And tell me on that occasion what  
9 happened?

10 A: Just like I said, they understood my complaint  
11 and then, you know, they decided that it was  
12 unsafe for a driver to be locked out of the  
13 building, having to wait on the Myrtle Beach  
14 driver and they let her stay. She didn't --  
15 she got the overtime.

16 Q: So on that occasion you were the one told to do  
17 the shuttle run, correct?

18 A: Right.

19 Q: And it's your testimony that you expressed a  
20 concern and -- I'm sorry, strike that. We're  
21 talking about that occurrence before, a few  
22 months before January 3, 2009, okay?

23 A: Okay.

24 Q: So on that particular day Tanisha was going to  
25 lock the building and leave?

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1 A: Right. That's what they wanted her to do.

2 Q: And you asked them not to do that?

3 A: Right. I raised a safety concern.

4 Q: What exactly did you say?

5 A: You know, I said that, you know, being locked  
6 out of the building, I didn't have any access  
7 to the facility and when the Myrtle Beach  
8 driver comes, they will sometimes bring like an  
9 international package or high value package and  
10 a supervisor has to be there in order to sign  
11 those things off.

12 Q: That doesn't sound like a safety issue to me.  
13 That sounds just like --

14 A: Oh, and I brought up that, you know. I brought  
15 up the being out there exposed to, you know, no  
16 access to a phone, what if something happens to  
17 me.

18 Q: This was in the discussion in the fall of 2008?

19 A: Right. Both times.

20 Q: And Ms. Sam. How did she respond? And I just  
21 want to talk about fall 2008 right now.

22 A: Okay. You know, she understood and she  
23 contacted whoever the management person that  
24 was at the time.

25 Q: Was that Bran Hanser?

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1 A: I don't believe so. I'm not sure, but I don't  
2 believe it was him.

3 Q: Do you know if she contacted the business  
4 manager?

5 A: I really don't know. I -- only thing I know,  
6 that she stayed.

7 Q: But it's your understanding that she contacted  
8 someone above her in management at that time?

9 A: Right.

10 Q: But you don't know who that person is?

11 A: Right. And as a matter of fact, after that,  
12 they installed a peephole for her to be able to  
13 walk out of there -- or peep out before she  
14 walk out to see if there was any danger.

15 Q: Well, we'll get to that in a second.

16 A: Okay.

17 Q: But first I want to finish talking about this  
18 fall 2008 time.

19 A: Okay.

20 Q: So how did Ms. Sam communicate to you that she  
21 was going to stick around?

22 A: I mean, she just -- I can't remember the exact  
23 words, but I do know she stayed and I wasn't  
24 locked out of the building.

25 Q: And do you know whether she went over eight

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1 hours that day?

2 A: Yes.

3 Q: How do you know that?

4 A: Because of me having to stay there until the  
5 Myrtle Beach driver got there and me having to  
6 go to the UPS store. Because after, you know,  
7 we leave, she have to do her paperwork or  
8 whatever that is.

9 Q: Do you recall when you left the Florence center  
10 on that day?

11 A: No, I don't.

12 Q: Do you recall when the Myrtle Beach driver got  
13 there that day?

14 A: Not that day. But going back to -- you asked  
15 me earlier about what time she would get there.  
16 She would actually get there before I do. I  
17 think she was -- she have to open up the  
18 building and set up the belt, so she would get  
19 there around 30 minutes before.

20 Q: Okay. And you believe -- what did she have to  
21 do after -- you mentioned that after the time  
22 that you left Florence to make the shuttle run  
23 that Ms. Sam had other duties back at the  
24 center?

25 A: Right. She would still be there, even after,



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1           yeah. After the driver leaves, she would still  
2           be there.

3       Q:   And what's your understanding of what Ms. Sam  
4           is doing at that time?

5       A:   Closing up. I don't know exactly what she has  
6           to do afterwards, but I do know she stays there  
7           after we leave. After I left, she was there,  
8           still there. The majority of times anyway.

9       Q:   Okay. And so you mentioned that sometime after  
10          this fall 2008 incident there was a peephole  
11          installed in the door at the center?

12      A:   Correct.

13      Q:   On just the one front door?

14      A:   I don't know how many, but I do know that door  
15          that drivers enter and exit from there's a  
16          peephole. Yeah, I think there was a time where  
17          me and her, we talked about safety and I  
18          brought up, you know, when people come up there  
19          when she's there by herself and ring that  
20          buzzer, you know, how do you know who's on the  
21          other side of that door. You know, in order  
22          for her to know, she got to open the door to  
23          see who it is.

24      Q:   That was before the peephole was installed?

25      A:   Correct.

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- 1 Q: So did you have any role in the installation of  
2 the peephole?
- 3 A: No. I didn't talk to anybody. Me and her had  
4 discussed safety issues but not -- no upper  
5 management or anything like that. I didn't  
6 talk to anybody.
- 7 Q: Do you know who made the decision to have the  
8 peephole installed?
- 9 A: No, I don't.
- 10 Q: Okay. So you don't know why that whoever it  
11 was decided to have the peephole installed?
- 12 A: I would assume, you know, it was for a safety  
13 issue.
- 14 Q: But that's an assumption, right?
- 15 A: For me, yes. I mean, we had talked about it,  
16 so.
- 17 Q: Well, what I'm trying to get at is no one said,  
18 Brad Hanser or a business manager, no one came  
19 to you and said, "Mr. Kelley, I decided to have  
20 a peephole installed to address the safety  
21 concern."
- 22 A: No, not to me.
- 23 Q: As far as you know, was that statement or  
24 something like it made to anyone else?
- 25 A: No, I don't know that.

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1 Q: So your statement that the peephole was  
2 installed for safety reasons, that's an  
3 assumption on your part, correct?

4 A: Right. That's --

5 Q: All right. Let's talk about the January 3,  
6 2009 date.

7 A: Okay.

8 Q: At that time you said there was a discussion  
9 with Ms. Sam where you referenced the prior  
10 fall 2008 event, correct? That when Ms. Sam  
11 and you were talking about you staying at the  
12 center after it was locked, you indicated that  
13 you had discussed this with her before?

14 A: Correct.

15 Q: Okay. So take me back to that discussion.  
16 Tell me what, as best you can recall, exactly  
17 you said to her.

18 A: As best as I can recall, you know, once I saw  
19 that message and I brought to her attention  
20 that, you know, that they had brought this up  
21 before and I mentioned that it was, I felt,  
22 unsafe and uncomfortable being locked out of  
23 the building.

24 Q: Okay. Did you explain why it was that you felt  
25 unsafe or uncomfortable?

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1 A: Right.

2 Q: Tell me what you said.

3 A: I said that I didn't have access to the  
4 facility; you know, what if I got sick; and at  
5 that time my cell phone was not working, I had  
6 no way of getting in contact with anybody.

7 Q: Now, why wasn't your cell phone working at that  
8 time?

9 A: It just wasn't working. I couldn't figure it  
10 out, what was wrong with it.

11 Q: Was it working before that day?

12 A: Off and on. I was having problems with it. As  
13 a matter of fact, I remember telling her  
14 earlier that day that if she needed to contact  
15 me, to contact me through my DIAD board because  
16 I had no -- my cell phone wasn't working.

17 Q: Was it out of power?

18 A: No. No, I don't think it was the power. It  
19 was just the -- I don't know whether I got it  
20 wet or what was going wrong with it, but I do  
21 know it wasn't working.

22 Q: At some point did you replace that cell phone  
23 or --

24 A: I did.

25 Q: Did you ever find out what was wrong with it?

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1 A: No.

2 Q: How long after January 3, 2009 did you replace  
3 it?

4 A: I don't know.

5 Q: Did you tell Ms. Sam in the discussion about  
6 staying at the building outside of the  
7 building, did you tell her at that specific  
8 time that your cell phone wasn't working?

9 A: Right. I explained to her about my cell phone  
10 earlier that day.

11 Q: Earlier that day, but I'm asking whether you  
12 explained it at the time.

13 A: At that time? I can't remember, but I do --

14 Q: I'm sorry, go ahead.

15 A: I do remember when I was talking to Brad I told  
16 him about my cell phone.

17 Q: Did you check your cell phone to see if it was  
18 working?

19 A: Right. But I don't know whether I, once I  
20 found out it wasn't working, I don't know  
21 whether I had it -- I don't think I had it on  
22 me that day at that time because I knew it  
23 wasn't working and that's the reason why I told  
24 her about it when I got there that morning.

25 Q: So you didn't have it with you?

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1 A: Right. I don't think I had it on me.

2 Q: And when you had this discussion with Ms. Sam,  
3 had she indicated that the Myrtle Beach driver  
4 was on his way to the Florence center?

5 A: No.

6 Q: All right. So after you expressed this concern  
7 to Ms. Sam, what happened next?

8 A: I think she contacted Brad.

9 Q: Did you have any understanding at that time as  
10 to what other employees were at the center?

11 A: Say that again.

12 Q: Was it just you and Tanisha at the center at  
13 that point?

14 A: Oh, no.

15 Q: Who else was there? Any other air drivers?

16 A: Yes. There was Daniel Isgett.

17 Q: Is Mr. Isgett an air driver or full-time  
18 baggage car driver?

19 A: He's an air driver.

20 Q: Okay. And who else?

21 A: And there was, I think Ms. Mary may have came  
22 up later after the discussion, but I do know  
23 she worked that day.

24 Q: And had those folks just come back from running  
25 their routes?

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1 A: They were back before I was. And the 22.3 guy  
2 was Jamie McDonald, he was there.

3 Q: Any other 22.3 guys there at the time of the  
4 discussion with Tanisha?

5 A: No. I mean, I don't know. Jamie wasn't  
6 actually there, but I do know he was still out  
7 running a route.

8 Q: All right. And now I'm just trying to find out  
9 who was physically at the center at the time  
10 you talked with Tanisha.

11 A: Okay. That was, when I got back, it was  
12 Isgett, he was there, and then Mary, I think  
13 she came up a little later --

14 Q: All right.

15 A: -- before it was over.

16 Q: At that point you indicated that Ms. Sam  
17 contacted Brad Hanser?

18 A: Right.

19 Q: And were you standing next to her when she made  
20 the call?

21 A: No.

22 Q: Where were you at the time?

23 A: I was doing the security check to the trailers.

24 Q: And then what happened next?

25 A: And as I was out there doing the security

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1 check, she came and got me and said that Brad  
2 wanted to talk with me.

3 Q: All right. And so you went into the office?

4 A: I did, and she completed the security check.

5 Q: Were you in Ms. Sam's office?

6 A: Right.

7 Q: Were you on a cell phone or a land line?

8 A: I was on a land line, the office phone.

9 Q: Do you know where Mr. Hanser was at the time?

10 A: No, I don't.

11 Q: Tell me everything you recall about that  
12 conversation.

13 A: Well, when I got on the phone with him and he  
14 said that -- asked me what was the problem and  
15 I asked him what problem. He said, I hear you  
16 don't want to wait on the outside of the  
17 building, you know, while it's locked on the  
18 Myrtle Beach driver. And then that's when I  
19 explained to him why.

20 Q: And tell me what you said as best you can  
21 recall.

22 A: Okay. I remember telling him, you know, he  
23 asked me -- I was telling him that I thought it  
24 was unsafe and I felt uncomfortable and I went  
25 on to explain to him why, you know; what if I



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1 got sick, what if I needed to contact someone,  
2 you know, about the packages, you know, if the  
3 Myrtle Beach driver brought a package that was  
4 a high value or international package.

5 Q: And let me stop you right there for a second.  
6 Is that a safety issue in your mind?

7 A: Being unsafe, you know, fearing for my life?

8 Q: No, I'm sorry. Having to contact someone about  
9 a high value package?

10 A: No, that was the uncomfortable, being in an  
11 uncomfortable position.

12 Q: Okay.

13 A: Of having the --

14 Q: Were there any other examples that you  
15 provided?

16 A: You know, after several times trying to get him  
17 to, you know, understand, and he just kept  
18 saying, you know, what you're saying doesn't  
19 make any sense.

20 Q: Did he say why?

21 A: No, he didn't say. He just kept saying what I  
22 was saying didn't make any sense and that's the  
23 way it was going to be. And then I was saying  
24 -- then I would tell him that, you know, I'm  
25 not trying to refuse to do the job, I just want

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1 to be in a safer place, area. And he said,  
2 well, what you're doing, you're failing to  
3 follow my instructions; you're terminated. And  
4 by that time, when he told me that, Tanisha had  
5 already finished the yard check. And so he  
6 asked me to give the phone back to her and he  
7 talked with her. And after he got off the  
8 phone with her I asked her did Brad say I was  
9 terminated to her, and she said no.

10 Q: Okay. I want to stop you right there because  
11 I just want to take it in bits, okay?

12 A: Okay.

13 Q: We'll get to that part, but in your  
14 conversation with Brad do you recall Mr. Hanser  
15 explaining to you that feeder drivers came in  
16 and out of that center at all hours of night?

17 A: I don't remember that.

18 Q: Do you recall Mr. Hanser asking you for a  
19 specific example of a safety incident or  
20 something that had happened at the center?

21 A: No. He didn't ask me nothing like that.

22 Q: Okay. And it was your understanding during the  
23 course of this phone call that Mr. Hanser  
24 wanted you to make that shuttle run, correct?

25 A: Right.

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1 Q: Did you at any point during the conversation  
2 say I will make the shuttle run?

3 A: I told him I wasn't trying to refuse the job,  
4 I wanted to make the shuttle run.

5 Q: But you told him -- but you indicated that you  
6 were not willing to wait outside the building  
7 with the building locked, correct?

8 A: Right. I told him that's how I felt.

9 Q: Did you reference any specific previous  
10 incidents that you think were unsafe at the  
11 center?

12 A: No, I didn't, no previous incidents. Oh, I  
13 mean, I told him about the previous discussion  
14 that was brought up.

15 Q: The one that we just talked about?

16 A: Exactly.

17 Q: Now, had you ever, prior to January 3, 2009,  
18 waited outside the Florence center with the  
19 building locked?

20 A: No.

21 Q: Had you ever waited outside the building at  
22 all? In other words, even if Ms. Sam was there  
23 and inside the building, that you wait outside  
24 the building by yourself?

25 A: Just waiting? No.

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1 scanning the parking lot to see.

2 Q: Were you ever approached by anyone?

3 A: No.

4 Q: Did you ever see anyone suspicious standing  
5 outside the building on those occasions when  
6 you came back?

7 A: Not standing outside the building, but, you  
8 know, walking down past the center.

9 Q: On the same street as the center?

10 A: Right. And I'm always -- if I see that, I'm  
11 always keeping my eye on that person.

12 Q: Okay, now going back to the discussion with  
13 Brad on the telephone. How long would you say  
14 the discussion lasted?

15 A: I don't really know.

16 Q: Do you recall Mr. Hanser pointing out that a  
17 package car driver or an air driver out on the  
18 road also faces uncertainty and perhaps unsafe  
19 conditions?

20 A: I don't remember him saying anything like that.

21 Q: Did you ever, did you suggest any ways, other  
22 than keeping Tanisha there, that you might feel  
23 more comfortable waiting outside the building?

24 A: Well, I was, I don't know whether I got the  
25 chance to explain to him because he kept

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1 cutting me off, but what I was trying to do  
2 was, if we could meet at a -- for somebody to  
3 call the Myrtle Beach driver, instead of having  
4 to meet there, to meet on a busy highway or  
5 something.

6 Q: But you never actually made that suggestion?

7 A: I don't remember whether I did or not. I know  
8 Brad was so angry.

9 **(Technical Interruption -- Off the Record)**

10 Q: I apologize, we went off the record for a  
11 moment, but I'll start the question over again.  
12 At some point in the conversation, Mr. Hanser  
13 indicated that either you wait outside the  
14 building with the building locked or you're  
15 going to be fired, right?

16 **MR. BABB:** Object to the form of the question. You  
17 may answered.

18 A: No, that's not what he said. He said that's  
19 the way it's going to be. And then after I  
20 tried to explain to him again about how I felt,  
21 he said that, he told me, he said, I'll tell  
22 you what, you're just failing to follow my  
23 instructions; you're terminated.

24 Q: But you understood that he wanted you and was  
25 instructing you to wait outside the building,

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1 correct?

2 A: Right.

3 Q: And you never said yes, I will do that?

4 A: No. When I -- no, I never said that, but I  
5 never said I wasn't going to do the job either.  
6 I never --

7 Q: But that's the instruction he was giving you?

8 A: Right. Telling me that's the way it was going  
9 to be.

10 Q: The instruction was to wait outside of the  
11 building and to let Tanisha lock up and leave,  
12 correct?

13 A: Right. Leave me outside the building.

14 Q: And did you ever indicate that you were willing  
15 to do that?

16 A: To wait outside of the building while it was  
17 locked?

18 Q: Right.

19 A: No, I never indicated that I would.

20 Q: And you understood that's what he was  
21 instructing you to do?

22 A: Right.

23 Q: But again, your testimony is that you -- I  
24 think at some point I saw you say "over and  
25 over again," expressing that you weren't

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1 comfortable doing that.

2 A: Exactly.

3 Q: All right. After he said that you were  
4 terminated, did you say to him "Okay, okay,  
5 I'll wait outside the building"? Did you  
6 change your mind?

7 A: No. No, I did not because I was terminated.  
8 It was -- after that --

9 Q: But you didn't ask him to --

10 A: I do remember saying, I do remember saying,  
11 "Come on man. I'm not refusing to do the job."  
12 I do remember saying that, after he terminated  
13 me. And he said, "Well, you're terminated.  
14 Leave. Give the phone back to Tanisha."

15 Q: Did you indicate that you were willing to wait  
16 outside the building with the building locked?

17 A: No.

18 Q: In other words, did you go back and say, "Hey,  
19 if it's going to cost me my job, I'll do it"?

20 A: No. I didn't -- you know, he had already  
21 terminated me. I just felt like, you know, I  
22 was terminated and I never did go back and say  
23 that. No.

24 Q: And so at that point you handed the phone back  
25 to Tanisha?

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1 A: I did.

2 Q: All right. What happened next?

3 A: You know, after she talked to him and when they  
4 finished their conversation, after she got off  
5 the phone with him, I asked her did Brad tell  
6 her that I was terminated, and she said no.  
7 And I said, "Well, he terminated me over the  
8 phone." And she said, "Well, he didn't tell me  
9 that." And so I asked her what was his number  
10 and I called him back and I asked him again was  
11 I terminated, and he said yes. And I said,  
12 "Well, you didn't tell Tanisha this, you know.  
13 If I'm terminated, you need to tell her because  
14 she's not thinking that I'm, you know, fired."  
15 And she got on the phone with him and after she  
16 got off the phone with him, she looked at me  
17 and said, "Yes, you're terminated. Brad said  
18 you were terminated."

19 Q: All right. And at that point, what happened?

20 A: At that point, I was getting ready to leave and  
21 was walking out and then the Myrtle Beach  
22 driver walked around the corner.

23 Q: Okay. I think we'll have to stop right there  
24 because it's 10:58. I've got a couple of voice  
25 mails from my Florence number. I want to make